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Before the COMMONWEALTH OF MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Order Instituting Rulemaking to Implement)

Certain Provisions of Massachusetts' Anti-Slamming) D.T.E. 99-18

Law, G.L. c. 93, §§ 108-113 and G.L. c. 159, § 12E)

)

COMMENTS OF MCI WORLDCOM, INC. REGARDING THE

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY PROPOSED RULES TO IMPLEMENT G.L. c. 93,
§§ 108-113 AND G.L. c. 159, § 12E

I. INTRODUCTION

Over the past several years, telecommunications carriers and industry regulators alike have become familiar with and taken action to prevent the practice commonly known as "slamming," or the unauthorized change of a customer's telecommunications service provider and the concomitant unauthorized charges on the customer's bill that result from such change. The Federal Communications Commission ("FCC") established initial guidelines to eliminate instances of slamming in 1985. The FCC later amended its rules to implement procedures to verify preferred interexchange carrier ("PIC") change orders generated by telemarketing agreements. In 1995, rising consumer complaints about slamming led the FCC to adopt additional safeguards to protect consumers from unauthorized changes of their interexchange carriers through the use of deceptive and misleading letters of agency ("LOA"). CC Docket No. 94-129 (Sept. 1995). The FCC recently issued a Second Report and Order and Further Notice of Proposed Rulemaking which updates the verification, crediting and liability rules and seeks comment on specific concerns relating to slamming prevention and enforcement.

On December 10, 1998 the Massachusetts legislature passed G.L. c. 93, §§ 108-113 as a means to protect consumers from the unauthorized switching of their local and long distance telecommunications service providers. On June 10, 1999 the Department opened this proceeding to establish rules to implement G.L. c. 93, §§ 108-113. The Department has proposed rules to implement G.L. c. 93, §§ 108-113 and has requested comments from the public. MCI WorldCom and its operating subsidiaries in Massachusetts (collectively, "MCI WorldCom" submit the following Comments.

II. COMMENTS

A. The Department's regulations should comply with the Rules and Regulations Promulgated by the FCC.

The rules and regulations adopted by the FCC in 1985 and amended from time to time, provide comprehensive protection for consumers from unauthorized changes of their interexchange telecommunications providers ("IXCs"). These rules and regulations are implicitly intended to "balance the industry's need for flexibility in marketing services to consumers and the need to protect consumers from deceptive marketing practices." 60 FR 35846 (July 12, 1995). In its recent Second Report and Order and Notice of Further Rulemaking, the FCC again emphasized that the purpose of its rules was intended to "strike a balance between our goals of protecting consumers and of promoting competition." (1) Similar goals are readily apparent in the provisions of G.L. c. 93, §§ 108-113. MCI WorldCom urges the Department to fully utilize the slamming regulations set forth by the FCC as a guide for establishing its own regulations and, further, to adopt regulations that are consistent and comply with those promulgated by the FCC, as amended from time to time.

B. Proposed Slamming Regulations

Section 13.02-- Definitions.

It is particularly important that relevant terms in the rules are clearly defined. With that aim in mind, MCI WorldCom proposes the following new definitions and/or clarifications to existing defined terms:

Customer: Section 13.02 of the proposed regulations defines a customer as: "a person or business who resides in Massachusetts and subscribes to local or long distance telecommunications services." MCI WorldCom proposes that the definition of customer as defined in 13.02 more closely mirror the language in Section 13.03(2) of the proposed regulations which discusses those persons who are authorized to change carriers. Accordingly, MCI WorldCom recommends that the definition of customer be modified to read as follows:

A customer is any person over the age of 18 with the authority to authorize a change in carrier as described in 13.03(d) of these regulations.

Slamming: The current definition of slamming is over broad. Slamming should be defined as, "the willful, intentional and unauthorized change in a customer's primary local or intrastate interexchange carrier." Carriers should not be penalized for unintentional changes in a customer's carriers owing to data errors, customer's change of mind or intervention by a member of the household.

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Section 13.03 - Requirements for Third Party Verification Calls

Section 13.03 of the Department's Rules address the requirements for third party verification ("TPV"). Section 1. specifically identifies the verification data that a TPV agent must obtain as proof of authorization. This information includes one of the following: (1) the last four digits of the customer's social security number, (2) the customer's date of birth, (3) the customer's mother's maiden name; or (4) any other independently verifiable information. Customers who do not wish to provide any of the authorized verification data must use a Letter of Agency ("LOA") to authorize a change. MCI WorldCom believes that the requirement that privacy sensitive customers can only change carriers via an LOA is overly restrictive. MCI WorldCom's current policy is to ask a potential customer who does not wish to divulge this personal information their permission to process the sale without the information. The customer's refusal to provide the information, along with their permission is used as verification of the sale. This process assures that privacy-conscious customers have access to a variety of vehicles for choosing a telecommunications carrier and at the same time are able to have their privacy needs addressed.

Finally, MCI WorldCom urges the Department to modify this section of the proposed rules to include all of the FCC-approved methods of PIC change verification. As proposed, Section 13.03 of the rules only would address those instances where verification of a customer's new carrier is accomplished via TPV or via an LOA. Existing FCC rules state, however, that states must permit the use of at least three different verification options, one of which is electronic authorization. MCI WorldCom has attached a copy of this section of the FCC rules as Exhibit A to this filing. MCI WorldCom agents currently use the electronic authorization method for residential customers. Accordingly, the Department's rules should be amended to permit IXCs/LECs to use this option for verification of PIC changes.

Section 13.03(3) Identification of the TPV Agent and Company

This section requires that

In addition to stating the purpose of the TPV call, the TPV agent must state his or her full name, and the name and address (city and state) of the TPV company. If requested, the TPV agent shall provide the customer with a toll-free number for the TPV company."

(Emphasis added) The Department should delete the section of the rule emphasized above. While MCI WorldCom does not oppose the requirement that the TPV agent state his/her name and the name of the company, requiring the TPV agent provide his/her address and phone is at best unnecessary and at worst, confusing to the customer. Any communications after the initial TPV call should be between the customer and the carrier. As such, the TPV agent should be required to provide a toll-free number for the customer to use to contact their chosen carrier -- not the TPV agent.

Section 13.03 (4) Confirmation of Existing Carrier

If adopted, this section of the proposed rules would require the TPV agent to

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"...confirm the customer's existing primary IXC or LEC, in addition to confirming the identity of the new, primary IXC or LEC." (Emphasis added) As the name implies, the TPV agent is a "third party" with no knowledge of the identity of the customer's existing LEC or IXC. In fact, MCI WorldCom, as the new carrier, would not know the customer's existing carrier. Without that knowledge, neither MCI WorldCom nor the TPV agent can confirm the identity of the existing carrier. It is MCI WorldCom's understanding that only the customer and the customer's LEC have access to this information. Accordingly, the section of the rule, highlighted above, should be deleted because MCI WorldCom and other carriers would not have the ability to comply.

Section 13.04 Authorized Changes, Complaint Resolution Procedure for Slamming Complaints

MCI WorldCom has two suggestions with respect to this section. First, 13.04(1) as it stands is currently over broad. Specifically, section (1) reads as follows:

(1) Unauthorized Change. An unauthorized change of a customer's primary IXC or LEC shall occur if the IXC or LEC that initiated the change fails to provide the required evidence set forth in M.G.L. c. 93, § 109 for each and every type of service sold or provides an LOA or TPV that the Department determines was obtained by mistake, misunderstanding, misrepresentation, false and deceptive business practices or by any other unfair or unlawful means.

(Emphasis added.)

First, the reference to "each and every type of service sold" is over broad. This reference should be modified to specifically reference intraLATA toll and local services, as these are the services over which the Department has jurisdiction.

Second, the references to "mistake" and "misunderstanding" should be deleted. For instance, if the customer makes a mistake and for example, transposes the digits in their phone number, then MCI WorldCom could be found guilty of slamming, even with a confirming TPV tape. Similarly, under this section, even with a confirming TPV tape, a customer could claim that they "misunderstood" and MCI WorldCom could be fined anyway.

Section 13.05 Alternative Dispute Resolution

MCI WorldCom notes that while part (1)(a) of the proposed Alternative Dispute Resolution process proposed in the rules addresses the customer's role in submitting a complaint, and part (1)(b) of the process addresses the Department's role in investigating the complaint, nowhere does this process specifically address the IXC/LEC's opportunity to respond to or rebut the complaint. Accordingly, MCI WorldCom proposes the following sentence be added after the first sentence in proposed Section 13.05(1)(b)

As part of the investigation the Department shall consider evidence presented by the

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LEC or IXC.

Finally, the Department should change the first word in 13.05(2)(a) from "shall" to "may". This change retains the discretionary nature of the Department's ability to fine carriers found guilty of switching a customer without proper authorization after consideration of the facts and circumstances of any particular incident.

III. CONCLUSION

WHEREFORE, MCI WorldCom urges the Department to adopt the proposed modifications discussed above.

Respectfully submitted,

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1. Second Report and Order and Further Notice of Proposed Rulemaking, In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, CC Docket No. 94-129, at para. 16. December 23, 1998.

Privacy Policy

